

RESPONSE

Claims 1-23 are pending in the Application. Claims 1, 13 and 23 are in independent format. Claims 1, 6, 13 and 18 have been amended to further clarify features of the invention.

Section 102 Rejection

The Examiner rejects claims 1-5, 7, 8, 10-17, 19 and 21-23 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,040,251 to Hanford. The Applicant traverses this rejection and all of the Examiner's assertions. The Applicant may only respond to selected assertions by the Examiner's by intends to traverse all of the Examiner's assertions. The Applicant also accepts all of the Examiner's admissions.

Section 102 Response

Claim 1

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

The Examiner asserts that "the Hanford reference discloses a rigid hollow vertical tube 21 for extending below or into a selected surface of a containing structure of a contained body of water including a liner 24 made of a flexible material, wherein the rigid hollow vertical tube includes an attachment member 32 extending beyond a top of the rigid hollow vertical tube for engaging the selected surface of the containing structure of the

contained body of water underneath the liner 24 and wherein the attachment member 32 includes a plurality attachment receptacles therein; a gasket 26 having an opening therein for engaging the attachment member 32 of the rigid hollow vertical tube 21, wherein the gasket 26 is placed over the liner 24 to engage the attachment member 32 of the rigid hollow vertical tube 21, and wherein the gasket 26 includes a plurality of attachment openings therein; a cap 25 having an opening therein for engaging the gasket 26 and for attaching to the attachment member 32 of the rigid hollow vertical tube 21, wherein the cap 25 is placed over the gasket 26 to engage the attachment member 32 of the rigid hollow vertical tube 21, thereby providing a water-tight connection and wherein the gasket includes a plurality of attachment openings therein; a plurality of attachment means 27 for attaching the cap 25 and gasket 26 to the attachment member 32 of the rigid hollow vertical tube 21 through the plurality of attachment openings in the cap 25 and the gasket 26 and into the plurality of attachment receptacles in the attachment member 32 of the rigid hollow vertical tube; and one or more horizontal attachment means 33 extending from a first side and a second side of the rigid hollow vertical tube 21 for attaching the rigid hollow vertical tube 21 to the selected surface of the containing structure of the contained body of water.” The Applicant traverses this assertion.

First, Hanford does not expressly disclose the claim element of “one or more horizontal attachment means extending from a first side and a second side of the rigid hollow vertical tube” as the Examiner suggests.

In direct contrast to the Examiner’s assertion, Hanford only expressly discloses “The coupler collar 22 may be formed with an annular shaped upper flange 32 and lower flange 33.” (Col. 6, lines 15-16). Thus, Hanford is disclosing a lower flange 33 as an integral part of a coupler collar 22.

Hanford does not expressly disclose a horizontal attachment means as illustrated by the Applicant in FIGS. 3 and 4 and related text. The only thing Hanford discloses is a circular coupler collar 22 with a circular lower flange 33.

Since Hanford does not expressly disclose a horizontal attachment means as disclosed by the Applicant, the Examiner is apparently asserting that the lower flange 33 of Hanford inherently discloses a horizontal attachments means as disclosed by the Applicant.

The Examiner is reminded that to establish inherency for anticipation, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 169 F.3d 743, 749 (Fed. Cir. 1999).

The Examiner is also reminded that in relying the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. *Ex parte Levy* 17 USPQ2d 1461,1464 (Bd. Pat. App. & 1990).

The Applicant requests the Examiner provide a basis in fact and/or technical reasoning that the circular lower flange 33 of circular coupler collar 22 would be recognized by those of ordinary skill in the art as equivalent to the Applicant's claimed horizontal attachment means based on the holdings of *In re Robertson* and *Ex part Levy*.

In addition, even if the circular lower flange 33 is equivalent or inherent to the Applicant's horizontal attachment means, which it is not, it does not extend from the vertical tube 21 of Hanford as the Examiner suggests but instead is an integral component of the coupler collar 22.

In direct contrast, the Applicant claim element includes a horizontal attachment means attached to rigid hollow vertical tube.

Thus, since Hanford does not teach all of the elements of Claim 1, Hanford cannot anticipate Claim 1 under the holding of *Verdegall Bros.*

In addition, the Examiner is reminded that to maintain a *prima case* of anticipation, the identical invention must shown in as complete detail in a single prior art reference as is contained in the anticipated claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Hanford does not show the identical invention in as complete detail as claimed by the Applicant (See FIGS. 3 and 4 and related text). Thus, the Examiner cannot maintain a *prima facie* case of anticipation under the holding of *Richardson* either.

Thus, Claim 1 is not anticipated by Hanford. Therefore the Section 102 rejection of Claim 1 should be immediately withdrawn.

Claim 13

The arguments for Claim 1 are incorporated by reference for independent Claim 13.

The Examiner *admits* "that Hanford does not disclose a water equipment apparatus comprising horizontal means extending through the right hollow vertical tube in pre-drilled holes."

Thus, Claim 13 is not anticipated by Hanford. Therefore the Section 102 rejection of Claim 13 should be immediately withdrawn.

Claim 23

The arguments for Claim 1 are incorporated by reference for independent Claim 23.

The Examiner *admits* that "the Hanford reference does not specifically disclose the attachment apparatus mounted in a pool that includes a plurality of attachable panels."

In addition, with respect to Claim 23, nowhere does Hanford disclose the claim elements:

“wherein *the wall* of the swimming pool *includes a plurality of attachable panels*,” and

“one or more horizontal attachment means *sized and dimensioned to attach to walls of the swimming pool, wherein the one or more horizontal attachment means are sized and dimensioned to attach to the plurality of attachable panels used for the wall of the swimming pool.*”

Thus, Hanford cannot anticipate Claim 23 under the holdings of *Verdegall Bros. and Richardson*. Therefore the Section 102 rejection of Claim 23 should be immediately withdrawn.

Claims 2-12 and 14-22

The arguments for Claims 1, 13 and 23 are incorporated by reference. Dependence Claims 2-12 and 14-22 add additional limitations not found in the corresponding independent claims. If the corresponding independent claims are not anticipated, the corresponding dependent claims are not anticipated.

Thus, Hanford cannot anticipate Claims 2-12 and 14-22 under the holdings of *Verdegall Bros. and Richardson*. Therefore the Section 102 rejection of these dependent claims should be immediately withdrawn.

First Section 103 Rejection

The Examiner rejects Claims 6 and 18 under 35 U.S.C. 103 (a) as being anticipated over Hanford in view of U.S. Patent No. 4,589,237 to Dahowski.

The Applicant traverses this rejection and all of the Examiner's assertions. The Applicant may only respond to selected assertions by the Examiner's by intends to traverse all of the Examiner's assertions. The Applicant also accepts all of the Examiner's admissions.

First Section 103 Response

The Examiner *admits* "that Hanford does not disclose a water equipment apparatus comprising horizontal means extending through the right hollow vertical tube in pre-drilled holes."

The Examiner then asserts that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a horizontal attachment extending through the vertical tube in pre-drilled holes in the Hanford apparatus in view of the teaching of the Dahowski reference for providing a more secure footing in concrete." The Applicant traverses this assertion.

The Examiner is reminded that to establish a prima facie case of obviousness in the first place, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference must teach or suggest all of the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991).

The Examiner is also reminded that if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984).

The Examiner is also reminded that if the proposed modification or combination of the prior art would change the principal operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti* 270 F.2d 810 (COPA 1959).

First, the Examiner has asserted that the horizontal attachment means as claimed by the Applicant is inherent in the circular lower flange 33 of circular coupler collar 22 (Pages 2-3 of the Office Action). The Examiner now asserts that the horizontal attachment means as claimed by the Applicant includes a horizontal attachments means 54 (rerod) as taught by Dahowski. This appears to be a contradictory argument. Clarification is requested by the Applicant.

Second, the rerod 54 cited by the Examiner appears only in the shoes 32 of Dahowski. Thus, the Examiner appears to be asserting that the shoes 32 with pre-drilled holes 40 (or 34 or 38) of Dahowski that include rerod 54 cited by could replace the end caps 20 of Hanford or the end caps 20 of Hanford could be modified with pre-drilled holes to accept the rerod 54 (and 36 and 42). However, neither of these modifications would not allow a successful combination of Hanford and Dahowski.

Dahowski teaches shoes 32 at a lower end of post 16 that include a rerod 54. Specifically, Dahowski also teaches "The lower ends of the posts 16 and 18 preferably rest upon shoes 32 on the ground G. The shoes 32 may be constructed similarly to the support plates 20, and may be formed of metal or a suitable plastic, having vertical extensions or legs 33 and having holes 34 in the legs 33, which receive a rerod 36 to secure the posts to the shoes 32, as best shown in FIGS. 5 and 6. The holes 34 match inline holes 38 in the lower end of the posts 16 and 18 and are considerably oversize to allow adjustment of the shoe on the ground to accommodate minor unevenness in the ground or substrate." (Col. 3, line 34-43). "... a common rerod 54 inserted thru the lower ends of the posts 50 and 16 and thru their respective shoes 32 and 32a." (Col. 3, lines 55-58).

However, Hanford teaches away from such a combination with Dahowski. Such a combination would render Hanford satisfactory for one of its primary intended purposes, namely attaching a post in a pool without draining water from the pool using an apparatus with a closed lower end.

Hanford teaches "The mounting support is an upright hollow tube with a closed lower end and a coupler collar mounted on its upper end embedded in an area of the ground defining the bottom of the pool. The closed lower end of the mounting support tube prevents water from draining from the pool." (Col. 3, lines 20-25) and "an end cap 20 is secured to the bottom of the hollow tube 21 to provide a resting location for the swimming

pool accessory post 11 and to prevent the pool from draining." (Col. 4, lines 45-49).

Thus, the end cap of Hanford is used to prevent the pool from draining. It could not be modified to include holes or considerably oversized holes to accept a rered 54 as is taught by Dahowski as the Examiner suggests. Such holes or considerably oversize holes would allow water to drain from the pool via the Hanford/Dahowski combined apparatus.

In addition, Hanford could not be modified by drilling holes in the hollow tube 21 and inserting rered 54 of Dahowski for the same reasons. Such holes in the hollow tube taught by Hanford would allow water to drain from the pool.

Since the combination of Dahowski and Hanford would render Hanford unsatisfactory for one of its primary intended purposes, namely, attaching a post in a pool without draining water from the pool, and would change at least one of the principal operations of the Hanford invention, there is no suggestion or motivation to combine Hanford and Dahowski under the holdings of *In re Gordon* or *In re Ratti*.

In addition, the Applicant's invention does not include a limitation of having a closed lower end that prevents water from draining from the pool as is taught by Hanford to allow the Applicant's invention to be practiced. Thus, Hanford alone, since it must include an end cap that prevents water from draining from the pool also teaches away from the Applicant's invention in a material aspect.

The Examiner is reminded that evidence showing there was no reasonable expectation of success supports a conclusion of non-obviousness. *In re Rinehart*, 531 F.2d 1049 (CPPA 1976).

There is no reasonable expectation of success to combine Hanford and Dahowski since drilling holes anywhere in the Hanford invention would allow water to drain from the pool. Thus, the Applicant's invention is nonobvious under the holdings of *In re Rinhart*.

The Examiner is reminded that to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested. *In re Royka* 490 F.2d 981 (CPPA 1974).

As was discussed above, all of the claim limitations are not taught be Hanford alone, or the combination of Hanford and Dahowski. Thus, the claimed invention is not obvious under the holding of *In re Royka* and *In re Vaeck*.

Thus, claims 6 and 18 and not obvious based on Hanford alone, or the combination of Hanford and Dahowski. Therefore, the 103 rejection of claims 6 and 18 must be withdrawn.

Second Section 103 Rejection

The Examiner rejects Claims 9, 20 and 23 under 35 U.S.C. 103 (a) as being anticipated over Hanford in view of U.S. Patent No. 5,325,644 to Cornelius

The Applicant traverses this rejection and all of the Examiner's assertions. The Applicant may only respond to selected assertions by the Examiner's by intends to traverse all of the Examiner's assertions. The Applicant also accepts all of the Examiner's admissions.

Second Section 103 Response

The Examiner *admits* that “the Hanford reference does not specifically disclose the attachment apparatus mounted in a pool that includes a plurality of attachable panels.”

The Examiner then asserts “it would have been obvious to one or ordinary skill in the art at the time the invention was made to employ the Hanford attachment apparatus in a pool having a plurality of attachable wall panels in view of the teaching of the Cornelius reference, wherein doing so would be a matter of design choice.” The Applicant traverses this assertion.

One element of Claim 23 recites “a swimming pool including a vinyl liner” and another recites “*one or more horizontal attachment means sized and dimensioned to attach to walls of the swimming pool, wherein the one or more horizontal attachment means are sized and dimensioned to attach to the plurality of attachable panels used for the wall of the swimming pool.*”

First, the Examiner has indicated that the Applicant’s horizontal attachment means are inherently disclosed by the circular lower flange 33 of the circular coupler collar 22 of Hanford.

This means the circular lower flange 33 of the circular coupler collar 22 would have to be increased in size and dimensioned to attach to walls of the swimming pool to match the recited claim elements of the applicant’s invention. Since such pool walls are typically at least one to three feet in width, the circular coupler collar 22 and circular lower flange 33 would have

to be increased in size to have a diameter close the one to three foot size.

Such a large circular coupler would be far too large to receive any conventional size pole, too large to manufacture and far too costly to install.

Such an assertion by the Examiner, with all due respect to the Examiner, borders on ridiculous.

Second, Hanford teaches an apparatus used with a pool with vinyl liner with and end cap so that water does not drain from the pool through the apparatus. Cornelius does not teach suggest or even mention a pool with a vinyl liner. Combining Hanford with Cornelius would render the combination unsatisfactory for one or its intended purposes, namely, providing an attachment apparatus with a closed end used through a vinyl liner that does not allow water to drain from the pool and would change at least one of the principal operations of the Hanford invention. Thus, the Applicant's invention is not obvious over the combination of Hanford and Conrelius under the holdings of *In Re Gordon*, *In Re Ratti*, *In re Royka* and *In re Vaeck*.

Third, the Applicant's invention also does not include a limitation of having a closed lower end that prevents water from draining from the pool as is taught by Hanford to allow the Applicant's invention to be practices. Thus, Hanford alone, since it must include an end cap that prevents water from draining from the pool also teaches away from the Applicant's invention in a material aspect.

Thus, Claim 9, 20 and 23 are not obvious based on Hanford alone, or the combination of Hanford and Dahowski. Therefore, the 103 rejection of claims 9, 20 and 23 must be withdrawn.

CONCLUSION

The prior art made of record in the Office Action but not relied upon by the Examiner is no more pertinent to Applicant's invention than the cited references for the reasons given above. The Applicant therefore submits that all of the claims in their present form are immediately allowable and requests the Examiner withdraw the §102 and §103 rejections of claims 1-23 and pass all of the claims immediately to allowance.

Respectfully submitted,

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